

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

December 12, 2008

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 07HD-137

HAWAII

Rescind Prior Board Action of September 14, 2007 (Item D-6), to Rescind Its Prior Actions of January 10, 2003 (Item D-16), Issuance of a Term, Non-Exclusive Easement to William and Louise Pape for Access and Utility Purposes at Kuwaikahi Gulch, Manowaipae and Kihalani, North Hilo, Hawaii, Tax Map Key: 3rd/ 3-5-04:35

BACKGROUND:

At its meeting of January 10, 2003, Item D-16, the Board of Land and Natural Resources approved a 55-Year Term, Non-Exclusive Easement to William and Louise Pape for Access and Utility Purposes at Kuwaikahi Gulch, Manowaipae and Kihalani, North Hilo, Hawaii, Tax Map Key: 3rd/ 3-5-04:35. Purpose of the request was to establish usable access onto private properties over an existing stream crossing/roadway. Currently, the legal access to the Pape private properties is over Hokumahoe Road, portions of which is only a "paper" road and is not usable due to erosion into the Manowaipae Stream/Gulch.

Execution of the easement document was never finalized due to the Papes' failure to provide the necessary tax clearances and liability insurance in a timely manner. Delays were also experienced because the easement documents were lost in transit and had to be reordered. As a result, at its meeting of September 14, 2007, Agenda Item D-6, the Board of Land and Natural Resources, approved as amended, to rescind its prior Board action of January 10, 2003 (D-16). The rescission of the January 10, 2003 Board action was in part prompted by strong opposition from a Mr. Paul Bryant, resident and neighbor in the area and due to misinformation utilized in making the decision.

The Land Board approved staff's recommendation to rescind its prior action to granting a term, non-exclusive easement to the Papes, but delayed the effective date of the rescission for 90 days (to December 13, 2007). That the rescission could be avoided and the easement can be granted if within this 90-day period:

1. The Papes submit to staff the required liability insurance naming the State of Hawaii as an additional insured for the easement area;

2. The Papes submit to staff the required tax clearances; and
3. Staff confirms the accuracy of the representations made by Michael and Lisa Barton (the Papes' designated representatives) that the Papes cannot legally access their properties from Hokumahoe Road.

The Papes have provided the necessary liability insurance since 11/20/07, which is scheduled to expire on 11/20/09. The required Tax clearances were provided on 11/19/07. A survey of Hokumahoe Road was prepared by a Daniel Berg, a licensed professional land surveyor with Independent Hawaii Surveyors LLC. **(EXHIBIT A-1)** A site inspection was conducted and with the aide of the survey, staff confirmed that the representations made by Mr. Barton to be true and accurate. With the new information, staff reports that the Pape property does have legal accesses via a county owned roadway, identified as Hokumahoe Road. However, the paved portion of Hokumahoe Road ends just short of the Pape property, at the boundary of the Nobriga property identified as TMK: 3rd/ 3-5-04:46. The "paper" road portion of Hokumahoe Road veers sharply northward at the Nobriga property, and into Manowaipae Stream/Gulch. The paved portion of roadway leading to a cattle gate at the boundary of the Pape property, originally thought to be a portion of Hokumahoe Road as reported by the County of Hawaii, is actually a private road/driveway over the Nobriga property. **(EXHIBIT A-2)**

As a result of our recent findings, staff is now recommending rescission of its Prior Land Board Actions of September 14, 2007, Agenda Item D-6, as information provided in that action was inaccurate and possibly influenced decisions on the matter. That legal access to the Pape properties over Hokumahoe Road, although confirmed on paper, cannot realistically be developed due to its location at the banks of a stream and eroded into a gulch as stated in the original submittal of 1/10/03. **(EXHIBIT A-3)** Issuance of an easement as approved in its Board actions of January 3, 2003 **(EXHIBIT B)** is warranted and will resolve the Papes' access problems.

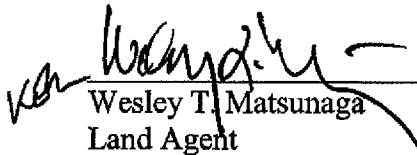
In attempts to assure proper and timely execution of the easement document when it becomes available, Mr. Pape has issued his designated representative a power of attorney to signature documents on his behalf.

Over the years, a Mr. Paul Bryant, an area resident has expressed opposition to the granting of an easement to the Papes. On 11/24/06, Mr. Bryant filed a complaint claiming cattle owned by Mr. Pape/Barton were crossing Kuwaikahi Gulch, destroying vegetation on his private property and eroding the gulch. Staff investigated and confirmed the situation. Suspect violators were notified and the problem was immediately resolved.

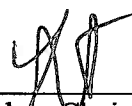
RECOMMENDATION: That the Board:

- A. Rescind its prior actions of September 14, 2007, under agenda Item D-6;
- B. Requires Grantee or its authorized representative to execute the easement document within 30-days from date of availability, unless delays are acceptable and justifiable. Failure to execute the easement document in an acceptable and timely manner will result in automatic rescission of the Land Board's prior action of January 10, 2003, Item D-6.

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:



Laura H. Thieleh, Chairperson

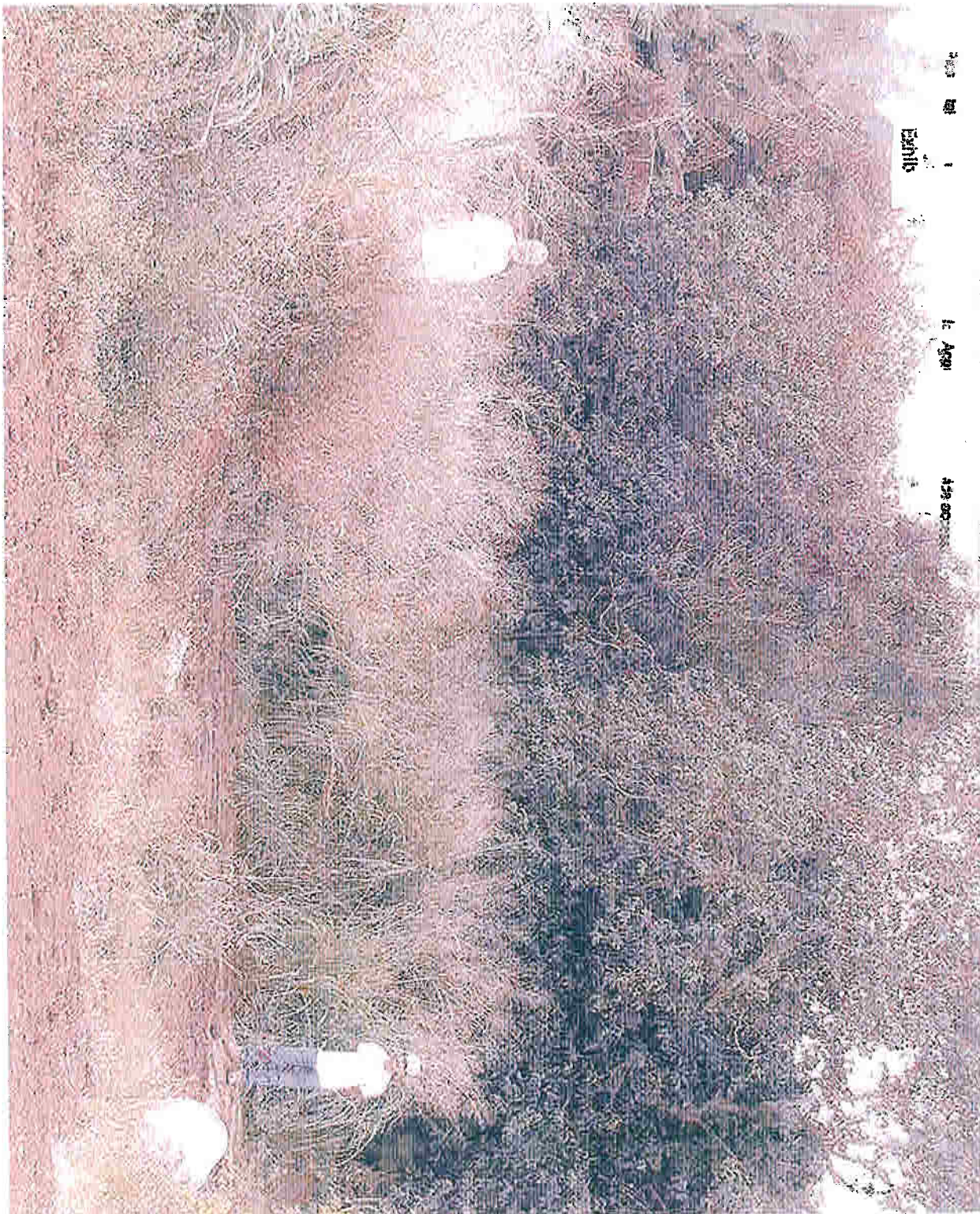






Nobriga driveway, previously thought to be a portion of Hokumahoe Road as reported to DLNR staff by the County of Hawaii.

EXHIBIT A-2



"Paper" portion of Hokumahoe Road, which veers northward off from the paved sections of Hokumahoe Road, into a stream/gulch.

EXHIBIT A-3



"Paper" portion of Hokumaho Road eroded into a stream/ gulch.

EXHIBIT A-3

STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
Land Division
Honolulu, Hawaii 96813

January 10, 2003

Board of Land and Natural Resources
State of Hawaii
Honolulu, Hawaii

PSF No.: 02HD-226

HAWAII

Grant of a 55-Year Termed, Non-Exclusive Easement to William and Louise
Pape for Access and Utility Purposes at Kawaikahi Gulch, Manowaipae and
Kihalani, North Hilo, Hawaii, Tax Map Key: 3rd/3-5-04:35.

APPLICANT:

William R. Pape and Louise W. Pape, husband and wife, Tenants by the Entirety, whose
mailing address is P. O. Box 171, Los Ojos, NM 87551.

LEGAL REFERENCE:

Section 171-13, Hawaii Revised Statutes, as amended.

LOCATION:

Portion of Government lands of Kawaikahi Gulch situated at Kihalani and Manowaipae,
North Hilo, Hawaii, identified by Tax Map Key: 3rd/3-5-04:35, as shown on the attached
map labeled Exhibit A.

AREA:

To be determined by an independent surveyor, subject to review and verification by the
Department of Accounting and General Services, Survey Division.

ZONING:

State Land Use District: Agriculture
County of Hawaii CZO: A-20A

TRUST LAND STATUS:

Section 5(b) lands of the Hawaii Admission Act
DHHL 30% entitlement lands pursuant to the Hawaii State Constitution: NO

as amended
APPROVED BY THE BOARD OF
LAND AND NATURAL RESOURCES
AT ITS MEETING HELD ON

1/10/03

ITEM D-16
EXHIBIT B

BLNR - Issuance of Easement
to William R. & Louise W. Pape

Page 2

January 10, 2003

CURRENT USE STATUS:

Vacant

CHARACTER OF USE:

For access and utility:
Right, privilege and authority to construct, use, maintain and repair a right-of-way over,
under and across State-owned land for access and utility purposes.

COMMENCEMENT DATE:

To be determined by the Chairperson.

CONSIDERATION:

One-time payment to be determined by independent or staff appraiser, subject to review
and approval by the Chairperson.

TERM:

Fifty-five (55) Years

CHAPTER 343 - ENVIRONMENTAL ASSESSMENT:

In accordance with the "Division of Land Management's Environmental Impact
Statement Exemption List", approved by the Environmental Council and dated April 28,
1986, the subject request is exempt from the preparation of an environmental assessment
pursuant to Exemption Class No. 1, that states, "Operations, repairs or maintenance of
existing structures, facilities, equipment or topographical features, or involving negligible
or no expansion or change of use beyond that previously existing."

DCCA VERIFICATION:

Applicants are individuals, therefore are not required to register with DCCA.

APPLICANT REQUIREMENTS:

Applicant shall be required to:

- 1) Pay for an appraisal to determine the one-time payment;
- 2) Provide survey maps and descriptions according to State DAGS standards and at
Applicant's own cost;
- 3) Applicant shall remove existing cattle gate erected upon the State parcel, at
Applicant's own cost.

EXHIBIT B

REMARKS:

By letter dated May 14, 2002, Mr. J. David Richardson, RE/MAX Pacific Realtor, on behalf of William and Louise Pape, requested two access and utility easements over State lands. Tax Maps of the area show Hokunahue Road actually traversing the Pape properties. However, although the lower portions of Hokunahue Road are improved, the portion just below and through the Pape properties is an unimproved paper road that runs mauka to makai through the Maniowaipae Homesteads. Although not confirmed by survey or engineering study, Mr. Richardson has serious doubts over whether a road could be developed as portions of its alignment is at the edge of a gulch and construction of such a roadway for access may not be feasible. The applicant is currently using two alternative accesses that commence from the end of a county road right-of-way, cross over a State owned stream and into the Pape's properties.

The proposed Easement 1 is a gravel road that commences at the end of a county road right-of-way and includes a concrete stream crossing that was probably developed by the plantation as part of their cane haul road system. Easement 1 that currently serves as an access and stream crossing is usable in its current condition. Any further subdivision or development of the Pape's properties that would increase the traffic beyond the current pasture use will probably require improvements to the road and crossing. Requirements for modification and/or improvements to the existing streambed crossing and easement area shall require the prior consent from the Chairperson.

The proposed Easement 2 is a similar type of road that again commences at the end of a county road right-of-way and crosses the stream into the Pape's properties. However, the crossing associated with this road is not improved and although traversable, is nothing more than a rock crossing within the stream. Due to environmental concerns in connection with this type of road crossings, staff feels that this second easement should not be granted at this time and any use of this second access should include appropriate improvements within or over the stream. Should the applicant wish to pursue a second easement, staff would recommend consultation with the Army Corp. of Engineers, the Commission on Water Resource Management and other appropriate agencies. Upon consultation and a clear plan/design of the crossing, the request for the second easement can be brought back to the Board for consideration subject to the necessary permits.

Since the road that will make up Easement 1 also serves as public access to the State owned stream, staff is recommending that the Applicant be prohibited from constructing a gate or obstructing the access to the stream in any way. The Applicant would be free to gate the road as it enters into their private property on their side of the stream.

EXHIBIT B

William and Louise Pape have not had a lease, permit, easement or other disposition of State lands terminated within the last five years due to non-compliance with such terms and conditions.

Various governmental agencies were solicited for comments. To date, all respondents indicated that they had no objections to the granting of the easement.

| Agency | Comment |
|------------------------------------|----------------------------------|
| County of Hawaii: | |
| Parks & Recreation | No comments |
| Fire Department | No comments |
| Police Department | No comments/ objections |
| Department of Water Supply | No comments/ objections |
| State of Hawaii: | |
| DOH | No comments |
| DLNR-Aquatics Resources | No objections |
| DLNR-DOFAW | No comments |
| DLNR-Planning Branch | No objections |
| DLNR-State Parks | No objections |
| DLNR-Water Resource Management | * See comments below (Exhibit C) |
| Other Agencies or Interest Groups: | |
| Office of Hawaiian Affairs | No comments |
| U.S. Army Corps of Engineers | * See comments below (Exhibit D) |

The Commission on Water Resources Management raised concerns to the granting of the easements, and commented that, "If proposed project alters the bed and banks of stream channel, the project may require stream channel alteration permit."

The United States Army Corps of Engineers provided the following comments concerning the granting of easements over stream beds: "Construction of improvements to existing stream crossings or any other activity, which would involve the discharge of dredged or fill material below the original high water mark of Kuwaikahi Stream and Kihalani Stream, including adjacent wetlands, may require Department of Army permit."

The Applicant will be required to consult and obtain the necessary permits from the Army Corps of Engineers, the Commission on Water Resource Management and any appropriate governmental agency should any construction work be required upon the streambed, stream banks and the gulch.

RECOMMENDATION: That the Board:

1. Declare that, after considering the potential effects of the proposed disposition as provided by Chapter 343, HRS, and Chapter 11-200, HAR, this project will

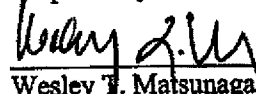
EXHIBIT B

probably have minimal or no significant effect on the environment and is therefore exempt from the preparation of an environmental assessment.

2. Subject to the Applicant fulfilling all of the Applicant requirements listed above. Authorize the issuance of a 55-year term, non-exclusive easement to William R. Pape and Louise W. Pape, covering the subject area identified as Easement 1 for access and utility purposes, under the terms and conditions cited above, which are by this reference incorporated herein and further subject to the following:

- A. The standard terms and conditions of the most current term easement document form, as may be amended from time to time;
- B. Prior to any repair, renovation or new construction within the stream bed, banks or the stream channel, Grantee shall be required to:
 - 1) Consult with the Commission on Water Resource Management, the United States Corps of Engineers, and any other appropriate governmental agencies that now have or in the future may have jurisdiction over the stream and the proposed work;
 - 2) Obtain all necessary federal, state and county permits; and
 - 3) Prior to the start of any work activity, Grantee shall provide the construction plans and copies of the necessary permits for Chairperson's approval;
- C. Failure to comply with any of the foregoing, shall be reason for cancellation of the easement; and
- D. Such other terms and conditions as may be prescribed by the Chairperson to best serve the interests of the State:

Respectfully Submitted,


Wesley T. Matsunaga
Land Agent

APPROVED FOR SUBMITTAL:


GILBERT S. COLOMA-AGARAN, Chairperson

EXHIBIT B



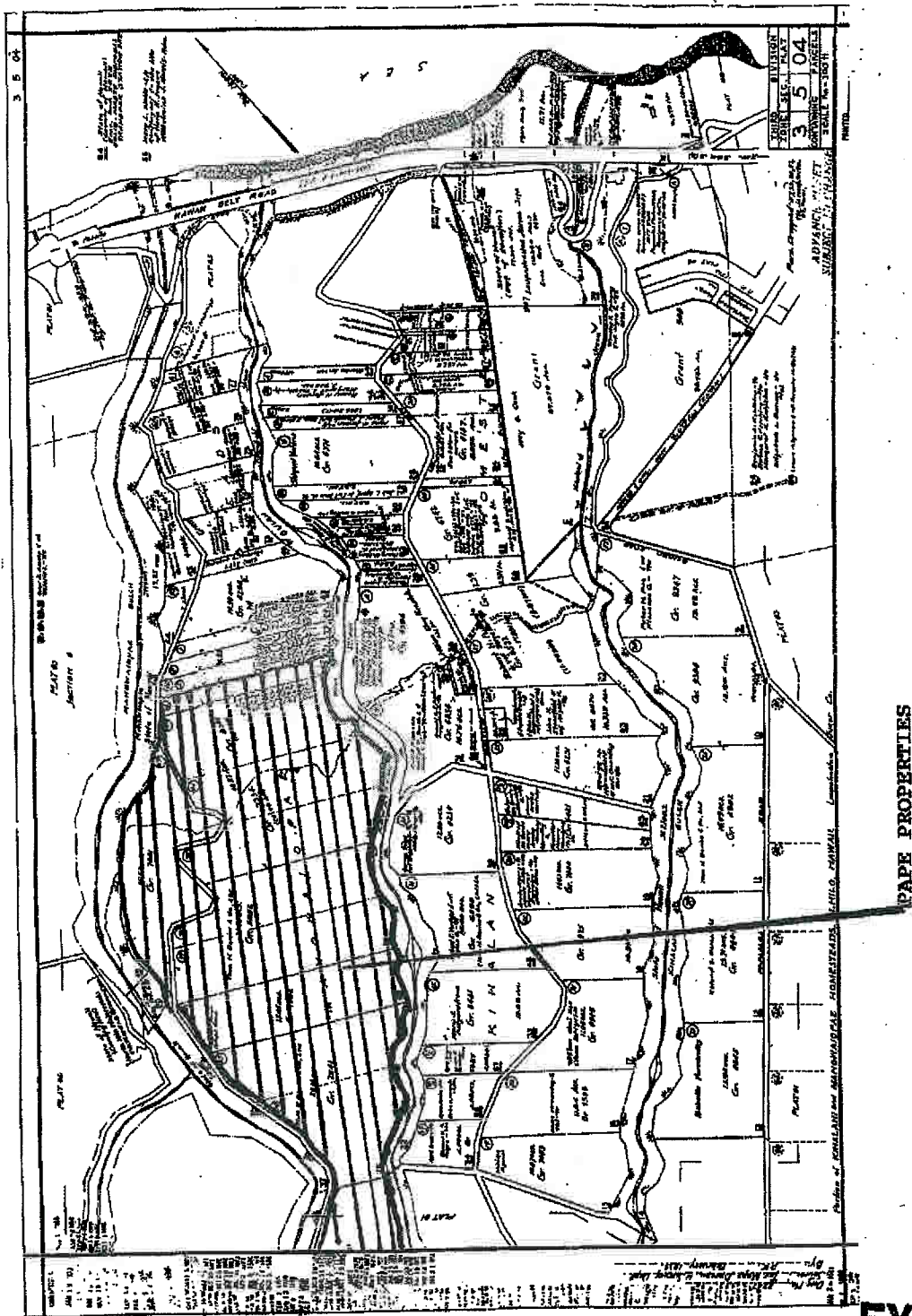


EXHIBIT 8
EXHIBIT R

2002 MAY 14 P 3:55

May 14, 2002

RECEIVED
LAND DIVISION
HILO, HAWAII

Harry Yada
Dept of Land & Natural Resources
Land Division
P.O. Box 936
Hilo, Hawaii, 96721

RE: Access Request - Kuwaikahi Gulch, Manowaiopae Hmstds, N.
Hilo
State of Hawaii - TMK#3/3-5-4-25

Dear Mr. Yada,

I am submitting this request (pursuant to my conversation today with Alex of your office) to obtain easements over existing roadways in two locations over the above referenced State of Hawaii owned property for ingress, egress and public utilities in favor of the following properties currently owned and used as a functioning cattle ranch by William & Louise Pape (Michael Barton Ranch Manager): TMK#3/3-5-4-36,38,39,40,41,42,43,44 and TMK#3/3-5-1-23,24& 25.

As the State access roadway (running mauka/makai) that shows running through the Pape property on the TMK map doesn't exist, and the east and west borders of the Property are Manowaiopae and Kuwaikahi Gulchs, there is no other access to the Property other than the existing roadways that (1) proceed along the County maintained roadway which runs between TMK#3/3-5-4-31 & 32 and then continues across the Kuwaikahi on an existing roadway that is known as the Old Manowaiopae Horse trail; and (2) along the mostly unimproved but existing County? roadway that also crosses Kuwaikahi Gulch on the mauka side of TMK#3/3-5-4-34.

These easements were apparently the subject of a hearing before the Office of State Planning back in 1996 wherein the access was confirmed as without these easements the Property was virtually landlocked and the agricultural use/ranching operation would fail. I am currently searching for the hearing decision paperwork and will provide it upon discovery.

I have attached the pertinent TMK Plat Maps to assist you in identifying the locations of the requested access easements and the Pape's Property

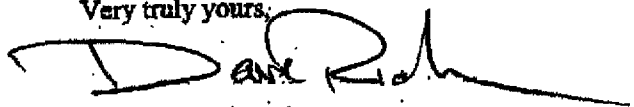
EXHIBIT B

Please let me know if you need any additional information to process this request or if you have any questions. Send any requests for more information to me at the following address:

Dave Richardson
P.O.Box 2502
Kamuela, HI 96743

Or fax me your requests at (808) 885-0334 or call me at (808) 885-6963

Very truly yours,

A handwritten signature in black ink, appearing to read "J. David Richardson", with a long horizontal flourish extending to the right.

J. David Richardson

EXHIBIT B

BENJAMIN J. CAYETANO
GOVERNOR OF HAWAII



2002 AUG 26 12:07
2002 AUG 21 4 11:28
STATE OF HAWAII
DEPARTMENT OF LAND AND NATURAL RESOURCES
COMMISSION ON WATER RESOURCE MANAGEMENT
P.O. BOX 821
HONOLULU, HAWAII 96809
August 19, 2002
RECEIVED
LAND DIVISION
HILO, HAWAII

GILBERT S. COLOMA-AGARAN
CHAIRPERSON

BRUCE S. ANDERSON
MEREDITH J. CHING
CLAYTON W. DELA CRUZ
BRIAN C. NISHIDA
HERBERT M. RICHARDS, JR.

LINNEL T. NISHIOKA
DEPUTY DIRECTOR

TO: Mr. Harry Yada, District Land Agent
Land Division

FROM: Linnel T. Nishioka, Deputy Director
Commission on Water Resource Management (CWRM)

SUBJECT: Request for Grant of a perpetual, non-exclusive easement for access and utility purposes, Kuwaikahi Gulch, Manowaipee Homesteads, North Hilo, Hawaii, TMK (3) 3-5-04:35, Dave Richardson, agent for William & Louise Pape

FILE NO.: 02HD-226, LD-GH

Thank you for the opportunity to review the subject document. Our comments related to water resources are marked below.

In general, the CWRM strongly promotes the efficient use of our water resources through conservation measures and use of alternative non-potable water resources whenever available, feasible, and there are no harmful effects to the ecosystem. Also, the CWRM encourages the protection of water recharge areas, which are important for the maintenance of streams and the replenishment of aquifers.

- [] We recommend coordination with the county government to incorporate this project into the county's Water Use and Development Plan.
- [] We recommend coordination with the Land Division of the State Department of Land and Natural Resources to incorporate this project into the State Water Projects Plan.
- [] We are concerned about the potential for ground or surface water degradation/contamination and recommend that approvals for this project be conditioned upon a review by the State Department of Health and the developer's acceptance of any resulting requirements related to water quality.
- [] A Well Construction Permit and/or a Pump Installation Permit from the Commission would be required before ground water is developed as a source of supply for the project.
- [] The proposed water supply source for the project is located in a designated water management area, and a Water Use Permit from the Commission would be required prior to use of this source.
- [] Groundwater withdrawals from this project may affect streamflows, which may require an instream flow standard amendment.
- [] We are concerned about the potential for degradation of instream uses from development on highly erodible slopes adjacent to streams within or near the project. We recommend that approvals for this project be conditioned upon a review by the corresponding county's Building Department and the developer's acceptance of any resulting requirements related to erosion control.
- [] If the proposed project includes construction of a stream diversion, the project may require a stream diversion works permit and amend the instream flow standard for the affected stream(s).
- [X] If the proposed project alters the bed and banks of a stream channel, the project may require a stream channel alteration permit.
- [] OTHER:

If there are any questions, please contact David Higa at 587-0249.

EXHIBIT B
EXHIBIT B



DEPARTMENT OF THE ARMY
U. S. ARMY ENGINEER DISTRICT, HONOLULU
FT. SHAFTER, HAWAII 96858-5440

REPLY TO
ATTENTION OF

August 7, 2002

2002 AUG -8 1:38

Regulatory Branch

RECEIVED
LAND DIVISION
HILLO, HAWAII

Mr Harry Yada
District Land Agent
Department of Land and Natural Resources
State of Hawaii
P.O. Box 936
Hilo, Hawaii 96721-0936

Dear Mr. Yada:

This responds to your request for review comments on the application for a perpetual, non-exclusive, access and utility easement for the Pape property at Kuwaikahi Gulch, Manowaiopae Homesteads, North Hilo, Hawaii (TMK 3-3-5-04:35). We have reviewed the document with respect to the Corps' authority to issue DA permits under Section 10 of the River and Harbor Act of 1899 (33 USC 403) and Section 404 of the Clean Water Act (33 USC 1344).

Granting of the proposed easement does not require a DA permit. However, construction of improvements to existing stream crossings or any other activity which would involve the discharge of dredged or fill material below the ordinary high water mark of Kuwaikahi Stream or Kihalani Stream, including adjacent wetlands, may require a DA permit. When plans for any such work are developed, we can provide a determination of DA permit requirements for the activity.

File number 200200460 has been assigned to this project. Should you have questions regarding these comments, please contact Mr. Peter Galloway of my staff at 438-8416 (fax 438-4060). Mailed inquiries should be addressed to: Regulatory Branch (CEPOH-EC-R/P. Galloway); U.S. Army Engineer District, Honolulu; Building 230; Fort Shafter, Hawaii 96858-5440. Thank you for working with the U.S. Army Corps of Engineers to protect the aquatic resources of Hawaii.

Sincerely,

George P. Young, P.E.
Chief, Regulatory Branch

Copy Furnished:
Mr. David Richardson, P.O. Box 2502, Kamuela, HI 96743

EXHIBIT B
EXHIBIT B